

REMARKS

Upon entry of the present amendment, claims 1-2 and 20-24 will remain pending in the above-identified application and stand ready for further action on the merits.

The amendments made herein to the claims and specification do not incorporate new matter into the application as originally filed. For example, the Examiner suggested the amendment to the specification in the outstanding Office Action. Similarly, the amendment to claim 1 simply recites that the diseases are selected from the group consisting of "arteriosclerosis and heart disease", which finds support throughout the original application and in claim 3 (now cancelled).

Regarding newly added claims 23-24, claim 23 is based upon claim 20, with the added limitation of "decreasing peroxidated lipid in a body of a patient in need thereof by..." administering a pharmacologically effective amount of one of the two compounds recited therein, while support for claim 24 occurs in claim 22.

Disclosure Objection

The Examiner has objected to Applicants' specification at page 5 based upon the use of the term "etc." therein. This language has

been removed from the specification in accordance with the Examiner's suggestion.

Claim Rejections Under 35 USC § 112

Claims 1-2 and 20-21 have been rejected under 35 USC § 112, first paragraph. Further, claims 20-22 have been rejected under 35 USC § 112, second paragraph. Reconsideration and withdrawal of each of these rejections are respectfully requested based upon the following considerations.

First, with regard to claims 1-2, it is noted that claim 1 has been amended to recite "wherein said disease is selected from the group consisting of arteriosclerosis and heart disease".

Regarding claims 20-22 (and new claims 23-24) it is submitted that each of these claims are also fully enabled by Applicants' specification. This is particularly true with regard to claims 22 and 24, which each recite the specific diseases being prevented.

In any event, each of claims 20-24 respectively recite inventions that would not require an undue amount of experimentation to either make, use or practice the instant invention. This is the test for determining enablement under 35 USC § 112, first paragraph.

Further, it is noted that the claimed invention as recited in each of pending claims 1-2 and 20-24 all particularly and

distinctly set forth the inventive discovery that the Applicants
regard as their own. Accordingly, the claims are also fully
patentable under the provisions of 35 USC § 112, second paragraph.

Additionally, for purposes of clarity claim 23 has been added
to recite a method like that found in claim 20, but reciting the
language of "decreasing peroxidated lipid in a body of a patient in
need thereof by administering a pharmacologically effective amount
of" one of the recited compounds. Likewise, newly added claim 24
(which depends from claim 23) clearly indicates that the disease is
"selected from the group consisting of arteriosclerosis and heart
disease." Accordingly, even if the USPTO improperly maintains its
outstanding 35 USC § 112 rejections of claims 20-22, it cannot
apply such a rejection to either of the newly added claims 23-24,
in any proper manner.

Claim Rejection Under 35 USC § 101

Claims 20-22 have been rejected under 35 USC § 101.
Reconsideration and withdrawal of this rejection is respectfully
requested based upon a full consideration of Applicants' prior
remarks set forth in the response of October 21, 2002, at page 5,
line 4 to page 9, line 4 thereof.

Upon properly considering said earlier remarks, the Examiner
will fully understand that each of pending claims 20-22 are fully

patentable under the provisions of Title 35 USC § 101 and that proper evidence has been presented with regard to the utility of the claimed invention.

Additional Considerations

The Applicants appreciate the Examiner's courtesy in indicating that claim 3 was objected to as being dependent upon a rejected base claim but otherwise allowable. Because claim 3 was redundant with instantly amended claim 1, claim 3 has been cancelled herein.

Applicants additionally note that the Examiner requested cancellation of Previously Presented claims 8-19, which were directed to a non-elected invention. As the Examiner requested in the outstanding Office Action at page 3, non-elected claims 8-19 have been cancelled.

CONCLUSION

Based upon the amendments and remarks presented herein, the Examiner is respectfully requested to issue a Notice of Allowance clearly indicating that each of the pending claims 1-2 and 20-24 are allowed and patentable under all provisions of Title 35 of the United States Code.

Appl. No. 09/963,365

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 

John W. Bailey, #32,881

JWB/enm
0425-0854P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000